

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 352

August 2, 1995, 5:57 p.m.
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DEFENSE AUTHORIZATION/Open Ethics Hearing on Packwood Charges

SUBJECT: National Defense Authorization Act for fiscal year 1996 . . . S. 1026. Boxer amendment No. 2079.

ACTION: AMENDMENT REJECTED, 48-52

SYNOPSIS: As reported, S. 1026, the National Defense Authorization Act for fiscal year 1996, will authorize \$264.7 billion in total budget authority for the Department of Defense, national security programs of the Department of Energy, civil defense, and military construction accounts. This amount is \$7 billion more than requested (\$5.3 billion more for procurement and \$1.7 billion more for research and development), and is \$2.6 billion less than the amount approved in the House-passed bill.

The Boxer amendment would require the Ethics Committee to hold public hearings in any pending or future case if, after a review and investigation of allegations, it found substantial credible evidence giving substantial cause to conclude that a violation within the jurisdiction of the Ethics Committee had occurred. The Committee could waive this requirement by a majority vote.

NOTE: By unanimous consent, the Boxer first-degree amendment was debated concurrently with a McConnell first-degree amendment, and the amendments were voted on consecutively (see vote No. 353).

The McConnell amendment would make several findings noting Ethics Committee's practices and the need for that committee to remain free from outside interference and partisanship, and it would express the sense of the Senate "that the Select Committee on Ethics should not, in the case of Senator Robert Packwood of Oregon, deviate from its customary and standard procedure, and should, prior to the Senate's final resolution of the case, follow whatever procedures it deems necessary and appropriate to provide a full and complete public record of the relevant evidence in this case."

Those favoring the amendment contended:

We firmly support ordering the Ethics Committee to hold public hearings in any case in which it has had found substantial credible evidence of wrongdoing by a Member. Only upon a majority vote (which would have to be bipartisan because the Ethics Committee has 3 Members of each party) should it be possible not to hold a hearing. A public hearing is essential for people to weigh the

(See other side)

YEAS (48)			NAYS (52)			NOT VOTING (0)	
Republicans (3 or 6%)	Democrats (45 or 98%)		Republicans (51 or 94%)	Democrats (1 or 2%)		Republicans (0)	Democrats (0)
Cohen	Akaka	Hollings	Abraham	Helms	Moynihan		
Snowe	Baucus	Inouye	Ashcroft	Hutchison			
Specter	Biden	Johnston	Bennett	Inhofe			
	Bingaman	Kennedy	Bond	Jeffords			
	Boxer	Kerrey	Brown	Kassebaum			
	Bradley	Kerry	Burns	Kempthorne			
	Breaux	Kohl	Campbell	Kyl			
	Bryan	Lautenberg	Chafee	Lott			
	Bumpers	Leahy	Coats	Lugar			
	Byrd	Levin	Cochran	Mack			
	Conrad	Lieberman	Coverdell	McCain			
	Daschle	Mikulski	Craig	McConnell			
	Dodd	Moseley-Braun	D'Amato	Murkowski			
	Dorgan	Murray	DeWine	Nickles			
	Exon	Nunn	Dole	Packwood			
	Feingold	Pell	Domenici	Pressler			
	Feinstein	Pryor	Faircloth	Roth			
	Ford	Reid	Frist	Santorum			
	Glenn	Robb	Gorton	Shelby			
	Graham	Rockefeller	Gramm	Simpson			
	Harkin	Sarbanes	Grams	Smith			
	Heflin	Simon	Grassley	Stevens			
		Wellstone	Gregg	Thomas			
			Hatch	Thompson			
			Hatfield	Thurmond			
				Warner			

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

allegations against a Senator. A hearing gives victims a chance to present their stories, it gives Senators a chance to ask questions and probe discrepancies in testimony, and it gives the opportunity for the public to understand the emotions and nuances in charges that they can only get from hearing victims instead of just reading transcripts.

The case that has propelled Senator Boxer to offer this amendment is the Packwood case which is currently before the Ethics Committee. Senator Boxer was afraid that the Committee, after a 2.5-year exhaustive investigation of sexual misconduct by Senator Packwood, and after finding substantial evidence of wrongdoing, might decide not to hold public hearings. Accordingly, she began to warn that she would demand public hearings if the Committee voted against them. Unfortunately, we have now found that Senator Boxer's suspicions that the Committee would vote against public hearings were correct--on a 3-3 tie vote, Democrats against Republicans, the Ethics Committee has decided not to hold hearings. Under the Committee's rules, a majority vote is needed to require hearings. This amendment would reverse that decision by requiring a majority vote not to hold hearings.

We have five basic reasons why we think hearings should have to be held. First, the precedent in every major ethics case this century has been to hold public hearings. There have been seven such cases, against Senator Bingaman in 1929, against Senator McCarthy in 1954, against Senator Dodd in 1966, against Senator Talmadge in 1978, against Senator Williams in 1981, against Senator Durenberger in 1989, and against Senator Cranston in 1991. Those cases had investigative phases, and as an appropriate part of those phases they had open public hearings.

The second reason we have for demanding a hearing is that we can find no compelling reason for not having such a hearing. The only distinguishing feature in this instance is that we are dealing with sexual misconduct. This issue is certainly important enough in our minds, and we are certain in the minds of all American women who have been subjected to aggressive, unwanted advances, to warrant public hearings.

Third, we in fact think public hearings are even more important in this case because unlike previous cases it has victims. The above-listed cases against Senators involve such charges as improper financial gain, campaign abuses, and misuse of office. Those misdeeds did not cause any individuals particular harm. In the Packwood case, though, 17 different women have charged Senator Packwood with sexual misconduct, and at least 9 of those women have said that they want the opportunity to testify publicly. Those women have a right to be heard.

Fourth, this case goes beyond Senator Packwood to the question of whether the Senate has the courage to discipline itself in a manner that wins public confidence. The public is not about to let this issue be swept under the rug. Hearings are necessary to remove any cloud of suspicion that will be created if they are not. Four Christian, pro-family groups have called for open hearings, and 8 women's law or advocacy groups have also been vocal for a thorough airing of the charges. If the Ethics Committee does not answer these calls, the appearance will be that the Senate is still a men's club that sticks together to protect its own.

The fifth reason for public hearings is that they will add to the evidence that the Ethics Committee has already gathered. Witnesses' testimony in person is often more complete than testimony that they give in depositions. So far, the women who have made allegations against Senator Packwood have not been able to appear before Senators to state their cases. We have only written testimony on which to rely. If we have the opportunity to question these women, we may discover key new facts.

Americans have a low opinion of Congress. They believe that it is a corrupt institution. The last election, which saw such an enormous turnover in membership, showed the degree of anger that Americans have with Members. If we vote to protect Senator Packwood by sealing these charges from public scrutiny the American people will be rightly outraged, and the esteem in which Congress is held will sink to a new low. We urge Senators not to make that mistake. We urge them to vote for the Boxer amendment.

Those opposing the motion to table contended:

Should Members be held to ethical standards according to party affiliation? A vote in favor of the Boxer amendment is a vote in favor of that proposition. The Boxer amendment, in supposed defense of a precedent that does not really exist, would absolutely shatter the authority of the Ethics Committee. If this amendment passes, we may as well disband the Committee.

The Ethics Committee was created in 1964 in the wake of the Bobby Baker incident, which was handled by the Rules Committee. Both sides of the aisle felt that incident was not handled well. Accordingly, Senator Cooper came up with the solution of creating a bipartisan Ethics Committee that would have complete independence to handle ethics investigations. Membership would be split 3-3 by party, and a majority vote would be required for each step in an investigation. Unlike on the Rules Committee, on which whichever party was in the majority could decide a question by majority vote, at least one Member's vote from the other side of the aisle would always be needed. The Committee's authority during the investigative phase was to be exclusive and absolute.

For 31 years the Ethics Committee has functioned with complete independence. The Boxer amendment would destroy that independence. Two and one-half years ago the Ethics Committee began its investigation of the allegations against Senator Packwood. Its investigation has been the most thorough of any investigation by the Senate or House in history. The Committee has interviewed 264 witnesses, taken 111 sworn depositions, issued 44 subpoenas, read 16,000 pages of documents, and spent 1,000 hours in meetings. Prior to the past couple of weeks, the most dramatic moments in the investigation took place when the Senate voted to direct the Senate Legal Counsel to bring a civil action on behalf of the Ethics Committee to enforce its subpoena of Senator Packwood's diaries. The Senate overwhelmingly upheld, in a bipartisan vote, the right of the Committee to issue that subpoena.

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Throughout this entire process, the Committee has worked in a very bipartisan way to conduct this investigation. Numerous votes have been held and decided unanimously.

Now, though, that bipartisanship has been dealt a severe blow. As the investigative phase neared completion, Senator Boxer, who is not a member of the Committee, chose to interfere in the Committee's work by announcing that if it did not vote to hold public hearings at the end of its investigation she would try to have the Senate force it to hold such hearings. She received glowing press reviews from media pundits for this interference, who hailed her for promoting openness in government. However, the Chairman of the Ethics Committee, Senator McConnell, was not impressed. He announced that the Committee would make its own decision. A week later, the Committee voted 3-3 not to hold public hearings on a party-line vote, with Democrats in favor and Republicans against. Under Ethics Committee rules, no affirmative action may be taken without bipartisan support. Frankly, we are surprised that Democratic Senators on the Ethics Committee did not vote against holding hearings. The appearance is that they have given in to political pressure. Certainly on the merits holding public hearings is not in order.

Our colleagues have argued that they are not breaking precedent but are enforcing it with this vote, because hearings (they claim) have always been held in the past at the end of the evidentiary phase of an investigation. To lend credence to their argument, they report that the nonpartisan staff of the Ethics Committee has informed them that in the seven major ethics investigations of Members this century hearings have been held. While we hold the staff of the Ethics Committee in high regard, our colleagues have twisted this information into a half-truth at best. Our colleagues have falsely implied that the Ethics Committee staff have said that full-blown hearings, with witnesses, cross-examinations, and detailed testimony have been the norm. In truth, all the staff said is that hearings have been held, but they did not say at what stage in the process or how detailed those hearings were. The truth is that the type of hearings our colleagues desire have not been the norm. In the Durenberger case, for example, there was a staged presentation with a pre-scripted proceeding, without witnesses and without cross-examination. In the Cranston case, the only hearings were in the preliminary fact-gathering stage; no inquisitions, cross-examinations, or general rehash of points took place at the end of the investigation. Other of the cases they cited took place before there even was an Ethics Committee.

The truth of the matter is that the Ethics Committee has made decisions on whether to hold hearings or not, and when, and in what form, depending on the particular facts of the case before it. It has two legitimate reasons for which it may decide to hold hearings. The first is to provide information to the public so that it may know on what basis its decisions are made. The second is to gather information. Over the past 2.5 years, the Ethics Committee Members, due to the monumental scope of the Packwood investigation, left much of the task of taking depositions and questioning witnesses to staff. Any Member who wished at any time could have joined in the questioning of any witness. Ethics Committee Senators did not exercise that right, though, because they had full confidence in the highly professional Ethics Committee staff. We remind our colleagues that this staff was put together when the Democrats were in the majority last Congress. We also inform them that when the Republicans took over and Senator McConnell assumed the chairmanship of the Committee, not one single staff member was replaced. This startling fact serves as testament to the nonpartisan professionalism of these staff members, and gives a strong indication of the bipartisan atmosphere that has generally prevailed between Members on that Committee as well.

Given the absolutely thorough nature of the investigation, the staff concluded that public hearings would not add any new information to the record and should therefore not be held. However, they recommended to the committee that all the information gathered be released to the public (including information from Senator Packwood's personal diaries) so that the public's right to know the basis of any final recommendation by the Committee would be known. Throughout the 2.5 years on this case, and in fact on most cases, staff recommendations have been accepted unanimously by Ethics Committee Members. In this case, the 3 Republicans on the Committee voted with the staff, and the 3 Democrats voted against. This unusual, partisan vote is hopefully only an anomaly. It will be in all our interests if the Ethics Committee is able to recreate the unanimity that ordinarily exists.

If the Boxer amendment passes, whether there is unanimity or not will not matter. If any vote in the process can be second-guessed from the floor of the Senate the Ethics Committee will be hopelessly politicized and will become largely irrelevant. Though few partisan arguments have been made in this debate, an observer may note that when the votes are tallied most Democrats will be in favor of the Boxer amendment and most Republicans will be against. One may then surmise that there are partisan motivations. Perhaps, in seeing a few Republican votes in favor of the amendment, one may even surmise that the unique sexual politics of this vote made it closer than it otherwise may have been. Future votes may not be as close, and presumably whether they carry or not will tend to have a correlation with the party affiliation of the accused. The precedent which we are being asked to establish is to endorse more aggressive investigations of whichever party happens to be in the minority. The Ethics Committee was created precisely to avoid this result.

Not all votes, of course, will be along party lines. For example, the earlier vote to back the Ethics Committee's subpoena of the Packwood diaries passed by a wide, bipartisan majority. Taking Senator Boxer's record as an example, though, one can see how the interest in pursuing an allegation may vary from case to case. Senator Boxer is very interested in public hearings in this case against a Republican Senator, but when she was a House Member she voted on several occasions against investigations of Democrats and for less public access. In 1983 she voted against creating a select committee to investigate alterations in hearing transcripts. In 1983, she voted for a proposed change to the House rules to make it easier to hold meetings that are closed to the public. In 1987, she voted against a further investigation of Congressman St Germain. In 1987, she voted against forming a special commission to investigate

an allegation of corruption by certain Members.

The point, of course, is not Senator Boxer's partisan voting record. Instead it is that Members of both parties generally see more merit in pursuing allegations of Members of the other party. This general tendency will always work against whichever party is in the minority. Thus, ironically, Democrats may be getting good press from politicizing this case, but in the end, if they win, they are shooting themselves in the foot. We do not expect them to win. We can count votes, and we know that we have enough votes, barely, to preserve the integrity of the Ethics Committee.